

## CHAPTER 5 INTEREST AND FEES

### *Part A* *Interpretation*

#### Definitions

39. In this Chapter-

(1) “**Deferred amount**” means any amount payable in terms of a credit agreement the payment of which is deferred and upon which interest is calculated or any fee, charge or increased price is payable by reason of the deferment and,

- (a) the deferred amount includes
  - (i) any obligation of the consumer that is deferred as per section 8(3) and section 8(4).
  - (ii) in respect of incidental credit agreements,
    - a. the amount on which a supplier of goods or services charges interest or a late payment fee, per section 5(2)(a), or
    - b. the lower price in respect of the agreements referred to in section 5(2)(b).
  - (iii) the amounts referred to in section 101(1)(b) to section 101(1)(g) inclusive
  - (iv) the amounts referred to in section 102(1)(b) to section 102(1)(f).
- (b) the deferred amount is reduced by any amount paid towards the settlement of the deferred amount, or an amount credited to deferred amount, at the time that such payment is made, or credit falls due, and
- (a) the date from which an amount becomes part of the deferred amount, is the date upon which such an amount becomes due or may be levied, subject to the limitations specified in the Act and these regulations.

**(2) “short term credit transaction”**

- (a) means a credit transaction
  - (i) in respect of a deferred amount at inception of the agreement not exceeding R8,000; and
  - (ii) in terms of which the whole amount is repayable within a period not exceeding 6 months; and
- (b) in terms of which an amount of money was disbursed to the consumer, to be utilised at the sole discretion of the consumer, and
- (c) includes pawn transactions,
- (d) but does not include credit transactions in respect of which the agreement is conditional upon
  - (i) the amount deferred being paid by the credit provider directly or indirectly to a person or juristic person that is related to the credit provider.
  - (ii) the amount deferred being paid by the credit provider to a person or juristic person other than the consumer, except where such condition is introduced by the consumer.

**(3) “unsecured credit transaction”** means a credit transaction in respect of which the debt is not supported by any pledge or other right in property or suretyship or any other form of personal security.

***Part B***

***General Stipulations***

**Interest calculation**

- 40.(1) Interest may be calculated daily and may be added to the deferred amount monthly, at the end of the month, or

- (a) if interest is added to the deferred amount at an earlier day than the last day of the month,
  - (i) this earlier day may not be earlier than the date upon which the repayment is due as per the agreement, and
  - (ii) the rand amount of interest for the month, must be calculated from the previous date when interest was added to the deferred amount, until this earlier day, and;
  - (iii) interest may not be added to the deferred amount more than once in every month; or
- (b) interest may be added to the deferred amount periodically as defined in the credit agreement, provided that such periods are no shorter than the number of days in the month during which such interest is added;
- (c) in the final month of a credit contract, interest due may be added to the deferred amount on the final day of the contract.

(2) The rand amount of interest for any particular day as referred to in (1),

- (a) must be calculated as follows for any credit agreement other than short term credit agreements:

$$\frac{\text{Deferred amount for the day} \times \text{interest rate}}{\text{Number of days in the year}}$$

- (b) must be calculated as follows for short term credit transactions:

$$\frac{\text{Deferred amount for the day} \times \text{monthly interest rate}}{\text{Number of days in the month}}$$

(c) Where:

- (i) The deferred amount for the day must be calculated as the average deferred amount for the day, or as the deferred amount at a particular time in the day, as defined per the credit agreement;
- (i) The interest rate must not exceed the maximum prescribed rate applicable to the category of credit agreement concerned;

- (ii) Number of days in the year may be interpreted as either 365, or as the actual number of days in the particular year,
  - (iv) For short term loans, the number of days in the month may be interpreted as either 30, or as the actual number of days in the particular month,
- (3) The rand amount of interest for any particular month, must be calculated by adding the rand amounts of interest for all the days in that month;
- (4) The manner of calculation employed by any particular credit provider may differ from the manner prescribed above, provided that the amount calculated by the institution for any year may not differ by more than 0.1% from the amount that would have resulted if calculated as prescribed in this section.

**Dates upon which fees become due and payable**

- 41.(1) Initiation fees may be levied on the date stipulated in the agreement, but not earlier than the date of approval of the credit application;
- (2) Monthly service fees may be levied at the end of the month to which they relate;
- (3) Annual service fees may be levied at the earlier of -
  - (a) the end of the year to which such fees relate, or an annual date specified in the credit agreement, or
  - (b) the termination of the agreement;
- (4) Transaction based service fees may be levied at the end of the month in which the transaction occurred;
- (5) In (2), (3) and (4) above, the respective fees may be added to the deferred amount at an earlier day than the last day of the month, provided that this earlier day is no earlier than the date upon which interest is added to the deferred amount, as per regulation 40 above.

**Part C**

***Interest applicable to different products***

**Maximum prescribed interest and initiation fees**

42.(1) The following maximum rates of interest will apply:

Table A: Maximum Prescribed Interest Rates

<b>Sub-sector</b>		<b>Maximum Prescribed Interest Rate</b>
<b>Mortgage agreements</b>		$[(RR \times 2.2) + 5\%]$ per year
<b>Credit facilities</b>		$[(RR \times 2.2) + 10\%]$ per year
<b>Unsecured credit transactions</b>		$[(RR \times 2.2) + 20\%]$ per year
<b>Developmental credit agreements</b>		
	<b>for the development of a small business</b>	$[(RR \times 2.2) + 20\%]$ per year
	<b>for low income housing (unsecured)</b>	$[(RR \times 2.2) + 20\%]$ per year
<b>Short term credit transactions</b>		5% per month
<b>Other credit agreements</b>		$[(RR \times 2.2) + 10\%]$ per year
<b>Incidental credit agreements</b>		2% per month

Where,

- (a) RR indicates the reference rate, being the ruling SA Reserve Bank Repurchase Rate,
- (b) The interest rate on short term credit transactions must be disclosed as a monthly interest rate, in such disclosure as is required by the Act and these regulations.

- (2) The following maximum limits will apply to initiation fees:

Table B:

Sub-sector	Initiation fee
<b>Mortgage agreements</b>	(a) R1,000 per credit agreement, plus, 10% of the amount of the agreement in excess of R10,000 (b) But never to exceed R5,000.
<b>Credit facilities</b>	(a) R150 per credit agreement, plus, 10% of the amount of the agreement in excess of R1,000 (b) But never to exceed R1,000.
<b>Unsecured credit transactions</b>	a) R150 per credit agreement, plus, 10% of the amount of the agreement in excess of R1,000 (b) But never to exceed R1,000.
<b>Developmental credit agreements</b>	
for the development of a small business	a) R250 per credit agreement, plus, 10% of the amount of the agreement in excess of R1,000 (b) But never to exceed R2,500.
for low income housing (unsecured)	a) R500 per credit agreement, plus, 10% of the amount of the agreement in excess of R1,000 (b) But never to exceed R2,500.
<b>Short term credit transactions</b>	a) R150 per credit agreement, plus, 10% of the amount of the agreement in excess of R1,000 (b) But never to exceed R1,000.
<b>Other credit transactions</b>	a) R150 per credit agreement, plus, 10% of the amount of the agreement in excess of R1,000 (b) But never to exceed R1,000.
<b>Incidental credit agreements</b>	Nil

Where,

- (a) The amount of the agreement is the amount deferred in terms of the agreement.

**Supplementary conditions on the application of the maximum initiation fee**

43 The following supplementary conditions shall apply on the application of the maximum initiation fee:

- (1) An initiation fee may be charged at the registration of a replacement mortgage in respect of a transfer from one credit provider to another, without there being a transfer of ownership of the mortgaged property, only if –
- (a) the transfer is done at the request of the consumer; and

- (b) the levying of the fee and the amount of the fee has been disclosed to the consumer by the acquiring credit provider before the consumer has agreed to the transfer.
- (2) No initiation fee may be charged on credit agreements as envisaged in section 101(2).
- (3) Initiation fee may never exceed 15% of the principal debt.

#### **Maximum service fee**

44 The maximum monthly service fee, prescribed in terms of Section 105(1), is R50.

- (1) Where an annual service fee is levied, the applicable limit is
  - (a) the monthly limit on the service fee, multiplied by 12, and
  - (b) where the period for which the fee is levied is less than 12 months, the monthly service fee multiplied by the number of months in such a period.
- (2) If a service fee is payable on a transaction basis, or on a combination of periodic and transaction bases, the total of such fees may not exceed the monthly or annual limit.

#### **Periodic review of limitation on fees and interest rates**

45. The National Credit Regulator must –

- (1) perform a review of interest rates and cost factors at intervals of no more than 3 years and advise the Minister of any changes that may be required;
- (2) when making recommendation to the Minister in terms of this regulation, consider:
  - (a) ruling interest rates and fees;
  - (b) cost of providing such credit;
  - (c) the choice available to consumers in the particular category of credit agreements, between different products and different credit providers; and
  - (d) the impact upon access to finance for persons referred to in section 13(a) of the Act

***Part D***  
***Other fees, costs and charges***

**Default Administration Charges**

46. The credit provider may require payment by the consumer of default administration charges in respect of each letter necessarily written in terms of Part C of Chapter 6 of the Act equal to the amount payable in respect of a registered letter of demand in undefended action in terms of the Magistrates' Courts Act, 1944 in addition to any reasonable and necessary expenses incurred to deliver such letter.

**Collection Costs**

47. For all categories of credit agreement, collection costs may not exceed the costs incurred by the credit provider in collecting the debt -
- (a) to the extent limited by Part C of Chapter 6 of the Act, and
  - (b) in terms of -
    - (i) the Supreme Court Act, 1959,
    - (ii) the Magistrates' Court Act, 1944,
    - (iii) the Attorneys Act, 1979; or
    - (iv) the Debt Collector's Act, 1998,which ever is applicable to the enforcement of the credit agreement.

**Other Charges**

48. If the credit provider is entitled to charge any amount referred to in s102(1)(b) to (e) of the Act, the credit provider must not charge the consumer a higher price for any goods or services provided to or arranged for the consumer than the price charged by that credit provider for the same or substantially similar goods or services provided or arranged in the ordinary course of business on the basis of a cash transaction or, if no similar goods or services are provided on the basis of cash transactions, the actual cost at which the credit provider could procure the goods or services provided as per section 102(1) at fair market value in an arms length transaction